

1 UNITED STATES DISTRICT COURT

2 DISTRICT OF MASSACHUSETTS

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5 UNITED STATES OF AMERICA,

6 Plaintiff,

Criminal Action  
No. 16-CR-10343-ADB

7 v.

January 22, 2020

8 SUNRISE LEE,

Pages 1 to 39

9

10 Defendant.

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13 TRANSCRIPT OF SENTENCING  
14 BEFORE THE HONORABLE ALLISON D. BURROUGHS  
15 UNITED STATES DISTRICT COURT  
16 JOHN J. MOAKLEY U.S. COURTHOUSE  
ONE COURTHOUSE WAY  
BOSTON, MA 02210

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2       FOR THE GOVERNMENT:

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16                  FOR THE DEFENDANT SUNRISE LEE:

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## PROCEDING S

8                   THE CLERK: This is criminal matter 16-10343, United  
9 States v. Sunrise Lee.

Will counsel identify themselves for the record.

11 MR. YEAGER: Good morning, Your Honor. Nathaniel  
12 Yeager for the United States. With me is Assistant United  
13 States Attorney David Lazarus and Assistant United States  
14 Attorney Fred Wyshak.

15 MR. HORTSMANN: Good morning, Your Honor. Pete  
16 Hortsmann on behalf of Sunrise Lee, who is present in court  
17 awaiting sentencing.

18 THE COURT: This is the longest Mr. Wyshak has gone in  
19 my courtroom without speaking.

20 MR. YEAGER: I didn't catch the last part, but I'm  
21 sure he's fine, Your Honor.

22 THE COURT: We're here for Ms. Lee's sentencing.

I have read and received the following: the presentence report as revised on January 15, the defendant's sentencing memorandum, which was filed on January 21 and

1       accompanied by 11 letters, which I've also read, and the  
2       government's consolidated sentencing memorandum and a  
3       sentencing memorandum individualized to Ms. Lee, both of which  
4       were filed on December 18. I've also read all the materials  
5       concerning forfeiture and restitution that have been submitted  
6       by all of the parties.

7                 Anything else from probation, Ms. Gokus?

8                 PROBATION: No. And nothing has been withheld from  
9       the presentence report.

10                THE COURT: Thank you. That was my next question.  
11       Thank you for that.

12                MR. YEAGER: And I would ask, and I've informed  
13       counsel, that the transcripts of the patients that have  
14       previously testified that I provided to him be part of the  
15       record with regard to Ms. Lee's sentencing.

16                THE COURT: Yes, that's fine.

17                Mr. Horstmann, anything I'm missing?

18                MR. HORTSMANN: No, Your Honor.

19                THE COURT: Okay.

20                Ms. Gokus just confirmed that nothing's been withheld  
21       from the report.

22                Mr. Hortsmann, have you had an opportunity to review  
23       the presentence report?

24                MR. HORTSMANN: At length, Your Honor.

25                THE COURT: And have you gone over it with your

1 client?

2 MR. HORTSMANN: Yes, Your Honor.

3 THE COURT: Ms. Lee, have you had ample opportunity to  
4 review the presentence report?

5 THE DEFENDANT: Yes.

6 THE COURT: And a chance to fully discuss it with your  
7 counsel?

8 THE DEFENDANT: Yes, Your Honor.

9 THE COURT: So I am -- the objections to this report  
10 are not quite as voluminous as some of the others, but there  
11 still are a lot of them. It is my intention to resolve only  
12 the ones that are relevant to the guideline sentencing  
13 calculation, but if there are others that anyone would like me  
14 to resolve, please let me know. I have read them all and taken  
15 note of all of the comments, but consistent with what I've done  
16 in the other cases, I'm going to begin with a base offense  
17 level of 6, which is taking into account probation's logic,  
18 which I verified on my own by reviewing the appendix to the  
19 Sentencing Guidelines. The dollar loss is 20, plus two for  
20 more than ten victims, plus two for reckless disregard of  
21 safety, plus three for her role, which gets us to an adjusted  
22 base offense level of 33.

23 She has zero criminal history points. That puts her  
24 in Criminal History Category I.

25 Anyone have any issues with that or want any of the

1 other objections resolved?

2 MR. HORTSMANN: Your Honor, we object to all the  
3 enhancements above a base offense level of 6. I objected to  
4 the entire factual background in the PSR. I agree with you  
5 that it's not necessary to get into all of those objections  
6 today. I think the most important objection is how loss is  
7 calculated above and beyond the level 6, and I'm happy to speak  
8 to that now, but we do object to the role that was assessed.  
9 We object to the danger. We object to the enhancement for -- I  
10 already said managerial role.

11 So beginning with loss.

12 THE COURT: Well, the dollar loss -- I mean, if you  
13 want to make an argument on the dollar loss, you can, but she  
14 was convicted of being a participant in a RICO enterprise and  
15 the business of the RICO enterprise was what it was, and the  
16 loss figure is arrived at based on -- all the information has  
17 been set forth in the presentence report in the government's  
18 motion and in all the other motions that have concerned this.  
19 So you know where the dollar loss figure comes from.

20 She was a regional sales director. She supervised  
21 other people. That's where the role enhancement comes from.  
22 And the fact that she was involved in the sale of Subsys,  
23 although I threw out the drug offenses based on the fact that I  
24 don't think anybody intended necessarily that doctors prescribe  
25 it to patients that didn't need it, they were certainly

1       reckless in who that drug was going to and the way they  
2 marketed it. I'm happy to hear you on those things, but that's  
3 my rationale.

4                   MR. YEAGER: If I could just make a record how this  
5 plays out, just for the record.

6                   THE COURT: Yes.

7                   MR. YEAGER: We agree with the court's reasoning, and  
8 we take no issue with it in terms of loss.

9                   THE COURT: That's fine.

10                  MR. YEAGER: But to be clear, the court explicitly  
11 ordered all defendants to provide alternative loss  
12 calculations. I think the date was extended to January 6. The  
13 defendant did not respond to that.

14                  Then with regard to objections to the PSR, the  
15 defendant filed a series of objections before the government  
16 ever filed a sentencing memorandum, in which he asserted that  
17 there was zero loss. He then withdrew those objections from  
18 Ms. Broquist. I pushed him on that in an email chain in which  
19 I said, you know, are you going to file additional objections.  
20 Once the PSR came down, he did not do that.

21                  Then a week ago Monday Your Honor held a hearing to go  
22 through all of the financial issues in this particular case,  
23 and Your Honor explicitly on the record asked all the  
24 defendants who was challenging loss, and the defendant did not  
25 challenge that loss.

1           So the government comes to this hearing today on the  
2 position that the defendant has waived any objection to loss at  
3 this point.

4           THE COURT: Well, I am not going to make a finding  
5 today about whether he's waived it. The facts are what the  
6 facts are, but I am finding that the loss figures that we've  
7 arrived at, the plus 20 points and 9.5 to whatever -- what's it  
8 go up to, 17 million?

9           MR. YEAGER: There's a range.

10          THE COURT: It was 9.5 million to --

11          PROBATION: It's 9.5 million to 25 million, Your  
12 Honor.

13          THE COURT: Right. So -- I think by any calculation  
14 the loss is squarely in that range.

15          MR. YEAGER: Thank you, Your Honor.

16          THE COURT: With regards to how loss is established in  
17 a health care case, the government is allowed to rely on the  
18 billing information, and then the burden shifts to the  
19 defendant to try and erode or dispute that figure in any way,  
20 and it hasn't been disputed in a way that I think that the  
21 guidelines contemplate, but I'm not going to make a finding on  
22 the waiver, but I am going to make a finding on the -- I think  
23 I already did make the finding last week, but I'll make it  
24 again, that the loss on the enterprise is between the 9.5 and  
25 the 25 million.

1                   MR. HORTSMANN: Well, I still have the opportunity to  
2 argue loss under 3553, but I do think this pushes the ball  
3 closer to more of a guidelines attack than a 3553 attack  
4 because of the manner in which the government calculated loss  
5 here. I certainly didn't intend to waive anything and there's  
6 no waiver on the record, more importantly by Ms. Lee of her  
7 right to challenge loss. Your Honor did ask the question last  
8 week, and my memory is that Mr. Kendall grumbled something, and  
9 then Your Honor moved on and said something to the effect of  
10 "We're not here for that."

11                  So if that was --

12                  THE COURT: That is not what happened. All right? I  
13 am not making a finding on waiver today. But that is not what  
14 happened. Okay? Go ahead.

15                  MR. HORTSMANN: My intent, having already filed  
16 something that said that our loss calculation was zero, was  
17 certainly not to waive it.

18                  THE COURT: Okay.

19                  MR. HORTSMANN: That's --

20                  THE COURT: I'm not finding waiver. But what I am  
21 finding is that the loss range where we are is appropriate to  
22 the enterprise. If you want to argue that that loss figure  
23 overstates when you get to the 3553 factors, that is absolutely  
24 fine.

25                  MR. HORTSMANN: I'm happy to do that now or I'm happy

1 to wait.

2 THE COURT: We will get to that.

3 So beyond sort of your objections to the enhancements,  
4 anything else on how we get to the guideline calculation that  
5 we get to?

6 MR. HORTSMANN: No, Your Honor.

7 THE COURT: Government?

8 MR. YEAGER: No, Your Honor.

9 THE COURT: All right. That results in an adjusted  
10 base offense level of 33, which gives us an advisory guideline  
11 sentencing range of 135 to 168 months, one to three years of  
12 supervised release, a fine range under the guidelines of 35,000  
13 to 350,000, which is capped at 250,000 given previous findings  
14 that we've made about the loss. We will determine restitution  
15 at an upcoming hearing.

16 Mr. Hortsmann, I am prepared to sort out forfeiture  
17 now. I don't have the figures from you that we've been using  
18 to establish the forfeiture number, which has basically been  
19 taking income, which is stock distributions and salary,  
20 crediting taxes paid against them, but not crediting the cost  
21 of the option exercise. So I can -- the government has asked  
22 me to defer on a forfeiture calculation for Mr. Babich this  
23 afternoon, and I'm happy to defer on Ms. Lee's also. I think  
24 the methodology that I've been using on the forfeiture number  
25 has been very consistent, and it is my intention to have it

1 continue to be consistent. So would you like an opportunity to  
2 sort that out with the government, or can the government give  
3 the number now? Do you know what the number is?

4 MR. LAZARUS: No, Your Honor. We have not sought to  
5 calculate that number as we maintained, that that's not the  
6 appropriate method of calculation, and that it's  
7 Mr. Hortsmann's burden under the court's framework to provide  
8 that information. I have asked Mr. Hortsmann for that  
9 information previously. He told me on January 13 that he would  
10 send me what he has. I've received nothing. So I don't have  
11 the information necessary to comply with the method that you've  
12 been using for the other defendants, and I maintain that the  
13 \$1,662,063.76, the gross figure pursuant to *Hurley* and the  
14 other arguments I've raised is the only appropriate number.  
15 But in short, no, I don't have the math, Your Honor.

16 THE COURT: So I am guessing, Mr. Hortsmann, that the  
17 appropriate forfeiture number, based on what I've been doing in  
18 the past, is \$1,662,063.76 minus whatever taxes she's paid on  
19 that money.

20 MR. HORTSMANN: Your Honor, I'm happy to defer this,  
21 as Mr. Babich did. My reason for not responding to Mr. Lazarus  
22 was we got the presentence report on the 15th, two days later,  
23 and it has her tax returns in there. What it doesn't have is  
24 2012 and 2013, which were given to probation but for whatever  
25 reason didn't appear in the report. So we can redo that and

1 argue about any differences later on, but I do think the one  
2 unique feature of Ms. Lee's income is that she did have a  
3 settlement with Insys in 2015, which tracks as income on her  
4 W-2 and her tax returns, but it's -- it's not pure dollar-for-  
5 dollar income, and we would submit that should be carved out of  
6 any --

7 THE COURT: I agree with that. The settlement's not  
8 income.

9 But let me -- I was going to get to this, but you've  
10 all been very circumspect about the reasons for her termination  
11 throughout the trial. Is anyone prepared to shed any light on  
12 that for me, either in open court or at sidebar?

13 MR. HORTSMANN: Your Honor, it's -- may we approach  
14 sidebar?

15 THE COURT: Yes.

16 **(SEALED SIDEBAR CONFERENCE BOUND SEPARATELY.)**

17 THE COURT: See we've now come to a philosophical  
18 agreement on the forfeiture, at least a philosophical  
19 understanding of what I'm going to do, and the government and  
20 Mr. Hortsmann are going to get together with the intent of  
21 coming up with a forfeiture number that represents her salary,  
22 proceeds of her stock shares, minus whatever taxes she paid on  
23 that money.

24 And the forfeiture will be part of the judgment  
25 entered today with the specific amount to be determined, and,

1 Mr. Hortsmann, I understand that you're not going to ask that  
2 your client come back for the specific entry of that forfeiture  
3 number? I don't know if she has a right to, but if she does --  
4 (Defendant/counsel discussion.)

5 MR. HORTSMANN: She'd like to keep her options open on  
6 that, Your Honor. I think it's something she may want to  
7 return for.

8                   THE COURT: Okay. I don't know if she has a right to  
9 come. If I'm ordering forfeiture equal to the forfeiture of  
10 the proceeds without the specific number, I don't know that she  
11 has a right to, but if you want -- why don't you all agree on a  
12 number, and then you let me know where we stand on the rest of  
13 it, and we'll make a legal determination from there.

14 MR. HORTSMANN: Thank you.

15                   THE COURT: So where we are is an advisory guideline  
16 sentencing range of 135 to 168 months, a supervised release  
17 range of one to three years, a fine range of \$35,000 to  
18 \$250,000, restitution to be determined, a special assessment of  
19 \$100, and forfeiture that I intend to have equal the amount of  
20 her proceeds minus the taxes paid on it.

21 | The government's recommendation, please.

22                   MR. YEAGER: If I might, Your Honor, are the  
23 government's objections regarding the GSR preserved, Your  
24 Honor?

THE COURT: Yes. You're interested in preserving --

1 you want the bankruptcy, the risk of insolvency, you're  
2 objecting to that, and you're objecting to the three points  
3 rather than the four?

4 MR. YEAGER: Yes, Your Honor.

5 THE COURT: Go ahead. Those are preserved.

6 MR. YEAGER: First of all, I want to thank probation.  
7 We haven't had an opportunity to thank probation. What  
8 Ms. Golus has been forced to deal with here, through no fault  
9 of her own, is a tremendous amount of work, and we're grateful  
10 for the work she did on this PSR, as with all the others.

11 Yesterday counsel for defendant filed a sentencing  
12 memorandum, and the uniqueness and creativity of his arguments  
13 I believe were designed to distract the court and others from  
14 what the defendant in this case did, from her crime.

15 It is true that the defendant came to Insys without  
16 experience in the pharmaceutical industry, and our  
17 recommendation is designed to reflect that fact. The  
18 defendant, however, is not a victim in this crime. She made  
19 1.6 million dollars by bribing doctors and by defrauding  
20 insurers. The defendant recruited and directed two of the  
21 co-conspirator doctors in this case, physicians Paul Madison  
22 and Gavin Awerbuch.

23 Ms. Lee started at Insys as a district manager, and  
24 she was incredibly successful. She was promoted to regional  
25 sales director. And at the time when she became a regional

1 sales director, along with two other regional sales directors,  
2 she was responsible for one-third of the entire Insys sales  
3 force. Joe Rowan, who Your Honor sentenced yesterday, was one  
4 of those sales directors. The second was a woman named Beth  
5 McKey, who testified before this court. Ms. McKey joined the  
6 company in 2013. She immediately confronted Alec Burlakoff and  
7 others regarding the criminal scheme that was going on, and she  
8 was demoted within three months of joining the company, and her  
9 responsibilities were taken away. She left the company seven  
10 months after joining it.

11 Ms. Lee was the third regional director. She started  
12 in the company as a district manager. And unlike Ms. McKey,  
13 embraced the scheme. And she was promoted and went on to make  
14 1.6 million dollars. Ms. Lee knew exactly what she was doing.

15 Exhibit 2262, an email from HR to Ms. Lee, discusses a  
16 performance evaluation that the defendant wrote on behalf of a  
17 woman named Jodi Havens. Ms. Havens was a sale rep who came to  
18 work and responded to Dr. Paul Madison, and in the email Lee is  
19 quoted as having to say that Havens should not be given credit  
20 for Madison's prescriptions because those, quote, scripts are  
21 guaranteed. Guaranteed based off of the relationship that I  
22 built with Madison.

23 Madison, as the court is aware, was a doctor from the  
24 Chicago area who Lee had given -- the doctor who Lee had gained  
25 a guarantee from ran a pill mill, and evidence in the case came

1       in on that under Exhibit 2, as well as the testimony of both  
2       Jodi Havens, Richard Horrocks and Holly Brown.

3                   Richard Horrocks testified before this court that  
4       sales reps -- he had bribed sales reps in Texas or attempted --  
5       as a sales rep, he attempted to bribe doctors in Texas. As a  
6       result he was promoted to take over the position that the  
7       defendant held as a district manager in Michigan and throughout  
8       the Midwest, when the defendant was made regional director.  
9                   And he described instructions provided by the defendant to him  
10      when he took over as the district manager about both Awerbuch  
11      and Madison. With regard to Madison, the defendant told  
12      Horrocks that she wanted at least anywhere -- quote, she wanted  
13      at least anywhere from 8 to 10 scripts a day to keep  
14      Dr. Madison up and going.

15                  Gavin Awerbuch, who as Your Honor knows, testified  
16      before the jury that he had been bribed by the defendant and  
17      others, and that the bribes from Ms. Lee included fake dinners,  
18      as well as a promise and arranging to pay the salary of one of  
19      the employees in Dr. Awerbuch's office. Awerbuch went on to  
20      become the top prescriber of Subsys in the United States.

21                  Your Honor has heard from patients who were victimized  
22      by Dr. Awerbuch's activity. And you heard from Dr. Awerbuch  
23      directly. He said these words, quote, "These were patients  
24      that didn't need strong opioids like Subsys. They did need  
25      pain management. But I certainly didn't need to write a

1       medicine like Subsys for them."

2                  That, Your Honor, is why the defendant was indicted.

3       That, we believe, is why she was convicted. And that is why  
4       the court should sentence Ms. Lee to a substantial period of  
5       incarceration and a \$250,000 fine. Thank you.

6                  THE COURT: When you say "substantial period of  
7       incarceration," do you have something more specific in mind?

8                  MR. YEAGER: Seventy-two months in prison, Your Honor,  
9       as we said before. I apologize.

10                 THE COURT: So you're not going to modify your  
11       recommendation in light of the sentences that have come before?

12                 MR. YEAGER: No, Your Honor. And I think the court  
13       should be aware, first of all, 72 months is the lowest  
14       recommendation we made for any defendants in this case that did  
15       not cooperate. Ms. Lee, like every other defendant, had that  
16       opportunity. In fact, Ms. Lee was given the opportunity --

17                 MR. HORTSMANN: Objection.

18                 MR. YEAGER: -- of a reverse proffer and rejected --

19                 MR. HORTSMANN: It's not admissible in any proceeding,  
20       Your Honor.

21                 THE COURT: It's fine. I will consider it as  
22       appropriate.

23                 MR. YEAGER: Thank you, Your Honor.

24                 THE COURT: Mr. Hortsman.

25                 MR. HORTSMANN: Thank you, Your Honor.

1           I want to start by reminding the court that the only  
2 reason Ms. Lee is in this case is to cast shade on Insys.  
3 That's it. If she were sitting here -- she would not be  
4 sitting here if she had graduated Arizona State in the spring  
5 of 2012 and had been hired by Insys right out of Arizona State.  
6 There's no doubt she would not be sitting here. The government  
7 would have given her the same treatment that it gave all the  
8 IRC women who answered the phone and lied about cancer.

9           She also wouldn't be sitting here, Your Honor, if  
10 she was just Alec Burlakoff's girlfriend. I mean, that is the  
11 state of affairs. What we have is a few salacious details that  
12 have kept her in this case, and it's just as exploitive as the  
13 pharma industry is in general. And I think Your Honor can  
14 consider that under 3553. I would ask -- I had asked you to  
15 consider it under the loss calculation as well. It defies  
16 logic that this woman is in this case for any reason other than  
17 the fact that there are a few salacious details that the  
18 government liked. And the media is to blame too. They like  
19 those details. They get hits. I can't fully blame the  
20 government for that. They create these tabloid captions that  
21 talk about Ms. Lee. She gets more hits than any other  
22 defendant in this case besides Mr. Kapoor, and it's solely  
23 because of the salacious details. We're not going to solve how  
24 the pharmaceutical industry uses women with this case. But  
25 Your Honor can solve how Ms. Lee was treated in this case very,

1 very quickly.

2 I'm going to start -- I started already, but I'm going  
3 to start at the end and say what I think are fair comparable  
4 sentences that other individuals received that are related to  
5 this case. I identified two of them in my memo. You heard  
6 Ms. Alfonso received three months' probation. Yes, she  
7 cooperated with the government, but her role in this  
8 conspiracy, in the RICO, was far more dangerous than any role  
9 that Ms. Lee ever had. She was writing prescriptions to  
10 patients, and she was signing off on insurance claims, and  
11 Ms. Lee didn't do any of that. That was not her role. So to  
12 give Ms. Alfonso three months, understanding she cooperated and  
13 testified for the government, and to give -- to ask for Sunrise  
14 Lee to get 72 months is disproportionate, and it shows a clear  
15 lack of perspective on the government's part. They have lost  
16 perspective in this case as a result of that.

17 Natalie Levine, Babich's wife, gets five years  
18 probation. That's a lot more serious than three months. But  
19 she was a regional sales manager, similar to Ms. Lee, who had  
20 many doctors who she visited, and it came out at trial flirted  
21 with. She willingly exploited an infatuation that Dr. Clough  
22 had with her, the doctor from New Hampshire, in order to get  
23 him to write scripts. And she got five months' probation.

24 The other individual that my client reminded me of  
25 this morning, who I did not include in my memo, is Karen Hill.

1 Karen Hill is probably more dangerous in terms of what Insys  
2 did here than any other female involved in the case. She was  
3 INSYS's trainer. She went around the country training sales  
4 reps, training managers. She didn't testify at trial. That's  
5 who Karen Hill was. She did assist the government. So she got  
6 a discount too. But by the same token, I'm led to believe she  
7 got five months, five months' probation. I don't think she got  
8 prison time either.

9 So those are the women in this case. And, Your Honor,  
10 I made a point of this in my memo as well. The IRC women all  
11 got free passes. There's no forfeiture against them. There's  
12 no fines against them. Some of them got immunity letters.  
13 They lied every single day, many, many times a day, and they  
14 were all women, and that's not what Ms. Lee did. Ms. Lee was,  
15 for lack of a better word, the entertainment committee. That's  
16 it. She didn't manage anybody. Some of the emails show a  
17 managerial flare, but that's not what she did.

18 Let's get to Awerbuch and Madison, because I think  
19 that's where the rubber hits the road here. Awerbuch, the  
20 government just won't let go of. They won't. It's in the PSR,  
21 and a lot of the objections I had to the language in the PSR  
22 had to do with how the Awerbuch relationship is phrased. She  
23 didn't start Awerbuch. She didn't begin him. That wasn't  
24 developed by her. The evidence at trial was that that was  
25 Brett Szymanski. "I did this for Brett" were Awerbuch's exact

1 words. That was before Ms. Lee ever joined the company. The  
2 Awerbuch train left the station long before Ms. Lee was ever  
3 employed by Insys. He went to the July 2012 doctor conference  
4 in Chicago. He was one of the business cards that was on the  
5 exhibit that was admitted at trial.

6 He met with Burlakoff. He's one of the first people  
7 that Burlakoff meets with after Burlakoff assumes his new title  
8 because Burlakoff knew how valuable Awerbuch was. And the  
9 government tried -- not their fault. They were misled by  
10 witnesses -- tried to say during trial, and in their opening  
11 statement, that Ms. Lee was present at a dinner October 2 of  
12 2012, and that's simply not the case. That's not the way the  
13 evidence bore out. The emails from Brett Szymanski after the  
14 fact were thank you for dinner, for meeting with myself and  
15 Alec, nothing about Sunrise, no cc to Sunrise.

16 The earliest that Ms. Lee met with Dr. Awerbuch was  
17 late October, and her relationship developed over time where  
18 they became friendly. That's what she was supposed to do.  
19 There's nothing in the Awerbuch record to show that she did  
20 anything but make sure that Brett did his job, make sure that  
21 Awerbuch was happy. And this notion that she somehow  
22 facilitated the hiring of Courtney Nagy, that was debunked at  
23 trial too. There's a series of emails in which she's the  
24 intermediary. She's the go-between between Mr. Szymanski and  
25 Mr. Babich. Grosshans is in there as well, Jenna Grosshans,

1 who I think was HR. But Brett's asking what's going on with  
2 Nagy. Email goes to Jenna, who forwards it to Babich, and  
3 Babich hires her. So, you know, just for example, one of the  
4 many problems with the PSR, paragraph 54 says Lee hired Nagy.  
5 That's not what happened. She may have facilitated it. She  
6 may have assisted it. She may have wanted it, for all we know,  
7 but to say she hired Nagy is a gross misstatement of the facts.  
8 It makes it look like she was the only one who was deciding  
9 that this was important.

10 Then we get to Madison, and Madison is a -- that's a  
11 complicated loss calculation, because Your Honor literally has  
12 nothing. You have nothing other than the testimony of Holly  
13 Brown to show that Ms. Lee even really had a rapport with  
14 Madison. You have Awerbuch too. But she didn't develop  
15 Madison. The testimony at trial was that Napoletano flew out  
16 right away to meet with Madison. She met with -- she did meet  
17 with him. She did develop a friendship with him, and it was  
18 useful to Insys, but to make her solely responsible for the  
19 development of Madison is just not accurate. And then where we  
20 have very limited records from Madison, very little patients,  
21 he didn't get charged with anything, so we don't have a loss  
22 calculation that's attributable to him like we do with  
23 Awerbuch. That was sort of the reverse calculation that I was  
24 trying to show you could be made here, Your Honor, was that  
25 Awerbuch, we've got a loss figure of 3 million, and Madison --

1 you know, there's a settlement that Insys makes with the state  
2 of Illinois for 4.4 million. That's obviously Madison. I  
3 don't have any of the paperwork. I don't have any of the civil  
4 stuff. I'm sure it's all confidential.

5 But the bottom line is Insys puts in its SEC filings  
6 that there is this settlement with Illinois in the Cook County  
7 Superior Court. It's got to be Madison. We didn't hear about  
8 any other doctors that had anything to do with Chicago other  
9 than Madison. So that money's already been paid, settled by  
10 Insys. So how do you hit her with a loss for Madison without  
11 even hearing from Madison himself, anybody who worked for  
12 Madison, any patients of Madison that said anything of import?  
13 There may be a few that the government can cull out of, you  
14 know, tape recordings with the IRC where somebody grossly  
15 misrepresented a patient's medical condition, but that's -- you  
16 know, that's \$1,800 a pop. And, in fact, there may be a prior  
17 medication that should be included in that calculation as well.  
18 So, you know, we don't get to a 17-million-dollar figure with  
19 Lee talking about Awerbuch and Madison. We just don't. And  
20 that's the problem that I have with the calculation that the  
21 government has made.

22 And then you know my critique of Fleischman's analysis  
23 is not to say that it's inaccurate. He's a doctor. He did a  
24 study. He appears to have been well intentioned and he was  
25 trying to inform the medical community about the value of TIRF

1 REMS. It's not a study of Insys. It's not a study of Subsys.  
2 So that's the problem. You can't take the 73 percent or 72  
3 percent, as it really is, and apply it to Subsys prescriptions  
4 when it relates to all other prescriptions for all TIRF REMS  
5 drugs. That's the problem I have. This figure has been  
6 applied by you three times already for co-defendants and now  
7 you're going to apply it to Ms. Lee, and it's inapplicable. It  
8 doesn't mean Fleishman was wrong. It's just not helpful in  
9 determining the scheme of what the true loss is here. I agree  
10 it's complicated. I don't think we should default to Fleishman  
11 as a basis for establishing it.

12 And then, you know, we have other people who had more  
13 significant roles, and I know you've heard about this from  
14 other lawyers, so I'm not going to belabor it, but the most  
15 significant individual, and, you know, I've had this debate  
16 with Mr. Wyshak in other cases, the most significant individual  
17 is Brett Szymanski. He received millions of dollars from Insys  
18 and he gets immunity. So his immunity bars the government from  
19 going after him for civil forfeiture, fines, contributing to  
20 the overall loss figure. I mean, when you take the three-to-  
21 four-million dollars that Szymanski received out of the  
22 pipeline of loss and dump it at Ms. Lee's feet, it's grossly  
23 unfair. I lost that battle in the First Circuit with  
24 Mr. Wyshak. The First Circuit says the government can do that,  
25 but that doesn't mean it's fair, and it doesn't mean Your Honor

1 can't consider it under 3553 because you know, having heard the  
2 evidence in this case, the significant role that Brett  
3 Szymanski played in all of this. He was the one sitting in  
4 Awerbuch's office pumping out the claim forms and the prior  
5 authorizations, and he's the one that developed the  
6 relationship with Awerbuch to begin with. "I did it for  
7 Brett."

8 If I may just have a moment, Your Honor.

9 The one thing that Your Honor did not hear during the  
10 trial, and that you've had some information on in the PSR is  
11 the horrific nature of Ms. Lee's upbringing. I haven't had a  
12 client tell me that they were on the back of a milk carton  
13 before. That's the situation in which she was raised. I don't  
14 know what you do with that. I think that she lacked any tools  
15 in her tool box, in her tool shed, anywhere, she lacked any  
16 tools to decipher that what was going on here was not normal.  
17 It just -- those weren't part of her upbringing. Those weren't  
18 part of her training, and Alec Burlakoff preyed on that. He  
19 preyed on that. You can send Alec Burlakoff to any gentlemen's  
20 club on the North Shore today, and there's not a single woman  
21 that wouldn't jump at this opportunity. This was the  
22 opportunity of a lifetime. She never gave it a second thought.

23 You know, the government got a lot of traction at  
24 trial, and I don't blame them, for the Horrocks email. It says  
25 what it says. But there's a very innocent explanation for that

1 email as well. Any sales representative who thought that their  
2 commissions or credit were being given to somebody else would  
3 have sent the exact same email, whether they're in the  
4 equipment leasing industry or pharmaceutical sales, that email  
5 can be read in context to simply just be a -- you know,  
6 defending her turf and it doesn't have to mean that she knew  
7 she had committed a crime. I mean, that just -- I understand  
8 the jury found her guilty, but there's an innocent explanation  
9 for that email.

10 And with respect to the emails that Mr. Burlakoff was,  
11 you know, circulating to the IRC and elsewhere, touting  
12 Ms. Lee's credentials, there's another way to look at those as  
13 well, Your Honor. That's a boyfriend simply looking out for  
14 his girlfriend in the managerial context. I don't believe,  
15 having looked at as much of the evidence in this case as I  
16 have, I do not believe that Sunrise Lee originated and somehow  
17 deserved credit for Awerbuch. Brett Szymanski wouldn't agree  
18 with that either. To his credit, that was one of the few  
19 things that Mr. Burlakoff agreed with me on on the witness  
20 stand. It wasn't a statement of truth from Burlakoff,  
21 shocking. It was simply, Hey, stop talking about my  
22 girlfriend. Stop talking about her and the IRC. She does what  
23 we ask her to do. She does a good job. Leave her alone. It  
24 was never intended to be what the government used it for.

25 So at the end of the day, Your Honor, you're left with

1 what I think is a very difficult choice. I think you've got  
2 other people in this case. You've got other people in this  
3 district. You've got other women in this district who have  
4 been sentenced to terms of probation, and the government walks  
5 in here with its knowledge of this case and the power of the  
6 United States government and says to you 72 months. We're  
7 asking that you sentence Ms. Lee based upon her conduct in this  
8 case, and it doesn't amount to more than a probationary  
9 sentence. We'd ask you to sentence her to six months'  
10 probation, and we'll be heard on forfeiture at a later time if  
11 we need to.

12 THE COURT: All right. Ms. Lee, you have the --

13 Sorry. You want to --

14 MR. YEAGER: If I could briefly, Your Honor.

15 The government takes great issue with the assertion  
16 that Ms. Lee was prosecuted because of her gender or because of  
17 any salacious activity. The United States prosecuted Ms. Lee  
18 because she committed a crime. The people that Mr. Hortsmann  
19 cites are people who cooperated with government investigations  
20 throughout the country, and IRC operators, who made \$17 an  
21 hour, not 1.6 million dollars.

22 In terms of salacious conduct, the defense in this  
23 case was that this was a legitimate speakers program. The  
24 salacious conduct that counsel was talking about was offered in  
25 a limited way to demonstrate that it was not a legitimate

1 speaker program. The salacious conduct was not mentioned to  
2 jury in the opening. It was not argued by me in closings, nor  
3 was it argued by Mr. Wyshak in rebuttal. The person who is  
4 using that salacious conduct now with this court is  
5 Mr. Hortsmann, and the government objects to that.

6 THE COURT: Do you want to respond to that,  
7 Mr. Hortsmann, or no?

8 MR. HORTSMANN: Just to say that it was out there long  
9 before the government indicted Ms. Lee. The government  
10 capitalized on it, and they should be held responsible for it.  
11 It clearly was something they intended to use, and the  
12 government -- the court doesn't need to look any further than  
13 who was the first witness in the case? Who was the very first  
14 witness? Boom, Holly Brown. What are we talking about? The  
15 underground. It says all you need --

16 MR. YEAGER: The fact that Paul Madison was running a  
17 pill mill.

18 THE COURT: Gentlemen. Okay. I got it. Two rounds  
19 is all you get.

20 Ms. Lee, you have an opportunity to address the court  
21 before I sentence you if you'd like.

22 THE DEFENDANT: Okay.

23 THE COURT: You can do it sitting or standing. Just  
24 make sure the microphone is close to your mouth. Okay?

25 THE DEFENDANT: Thank you, Your Honor.

1           I've done a lot of thinking, reflecting on things that  
2 have happened, things that have led me to where I'm at right  
3 now. When I was first arrested, I didn't understand, although  
4 during the settlement dispute I was dealing with the company, I  
5 was told that I was a subject of the investigation leaning  
6 towards being a target. And I honestly felt that that was part  
7 of the threats that I was getting. And after I had settled  
8 with the company, from what I was being told, and following up  
9 with my attorney, the government's interest in me dissipated,  
10 which I believe that would have, because I just figured that  
11 these are lies or rumors that possibly got to them, and they'll  
12 check into the stuff.

13           Not making excuses about -- I don't want to make  
14 excuses about what happened at that company. I just want you  
15 to understand where my mindset was. At no point working at  
16 that company did I think that what we were doing was somehow  
17 wrong in the sense of things we would question, but our  
18 understanding -- you've got to understand it from somebody  
19 who's never worked in pharmaceuticals before. When the  
20 company's under investigation, and there are these national  
21 sales meetings where they educate you on all this and they give  
22 you these directions, and then you've got these conference  
23 calls that are recorded, and they're giving these directions  
24 that they're seeing, you know, like the eight to ten  
25 prescriptions per day, those were directions given during these

1 conference calls, and I was following up with my team in terms  
2 of what was distributed on the conference calls.

3           But when the company's under investigation and they're  
4 getting advice from the government from a person who has never  
5 been in this field, I couldn't comprehend that we were doing  
6 something wrong, especially when these calls were recorded. I  
7 just -- and I honestly believe that after I lost my job and  
8 was, you know, starting the process with the EEOC, that this  
9 was part of the threat until -- and I didn't hear anything from  
10 my attorney at all until I was arrested. I didn't have a  
11 warning. I didn't have anything. And I've been working on my  
12 health, and it's been very difficult.

13           What I experienced at that company and what these guys  
14 did to me and a lot of other girls, but they pushed me in that  
15 direction, and I did -- nervous breakdown, whatever you call  
16 it, but I reached a point where I couldn't recover, and I've  
17 been trying to, and that's what I've been working on, is trying  
18 to get healthy.

19           So as I was trying to work on getting healthy thinking  
20 that this was behind me, I'm arrested. And since then I have  
21 been questioning why, how, how is it possible? I read the  
22 indictment. It's still not making any sense because it's  
23 incredibly fake. The previous attorney I had, I came to learn  
24 that there was a lot of conflict of interests. And although he  
25 claims that he did not --

1           To try to get you to understand my mindset as well,  
2 I'm not making excuses. I do understand that I failed to see  
3 insurers as the victims. I failed to see insurers as the  
4 victims because I saw patients as the victims and learning  
5 about their barriers and their experiences and the medications  
6 they were being forced on, which was the generic brand of this.  
7 When I spoke to doctors and reps, my focus was on switching and  
8 getting them off of the generic because I found out diabetic  
9 patients were on it. It was the medication that was cheaper  
10 and insurance would cover that. So when this company offered a  
11 new revolutionary drug that actually targeted their pain and  
12 stayed in the system longer and they didn't have two grams of  
13 sugar in it and, you know, you had patients that didn't have  
14 teeth, I sympathized with that because I know what it's like to  
15 not have insurance. I know what it's like to have to struggle  
16 and never -- not have the best service or treatment, and it's  
17 just how life is, but I saw myself in a position where I really  
18 had good intentions and tried to help, and that's my nature.

19           Everything that they said about me, although, yeah, I  
20 traveled and did exotic dancing, but I took care of my kids. I  
21 put a roof over their heads and provided food on the table.  
22 You know, my kids, my family always came first.

23           And that's how it is. You can ask any of my friends  
24 or my family, everybody knows me as a person who always wants  
25 to help. I've taken in families into my home.

1           So not making excuses, I'm just trying to get you to  
2 understand me, where my mindset was, and I was easily taken  
3 advantage of by Alec, and this opportunity of a lifetime that I  
4 thought I had, which was fake, and I have to live with that.

5 But --

6           Thank you.

7           THE COURT: Would either party object if I speak to  
8 Ms. Golus for a moment?

9           MR. HORTSMANN: No, Your Honor.

10          MR. YEAGER: No, Your Honor.

11          (Discussion held off the record.)

12          THE COURT: I want to thank the parties for their  
13 advocacies.

14          I said it before with regards to these Insys  
15 sentencings, but these are hard sentencings.

16          In coming to an appropriate sentence for Ms. Lee, I  
17 have considered and am required to consider the advisory  
18 guideline sentencing range, the nature and circumstances of the  
19 offense of which she's been found guilty, her personal history  
20 and characteristics, the need for the sentence to reflect the  
21 seriousness of the offense, promote respect for the law, and  
22 adequate deterrence, both general and specific. And I also  
23 have to consider all the factor under 18 U.S.C. 3553(a).

24          On the one hand, I view Ms. Lee as different from some  
25 of the other defendants in this case. I think she was, as

1       Mr. Hortsmann pointed out, in many way extremely ill-equipped  
2       to deal with the situation at Insys and the pressures there.  
3       Alec Burlakoff found her at a women's club or gentlemen's club,  
4       and I think that the options in the oasis that he painted for  
5       her were probably very difficult for her to resist. And I  
6       think not having the pharmaceutical background made her ill-  
7       equipped to really sort out what was right and what was  
8       wrong -- not right and wrong, but when and where the company  
9       crossed the line with what they were doing.

10           On the other hand, Mr. Hortsmann, we -- us women, we  
11       spend a lot of time trying to look for equal opportunities.  
12       Right? We don't want to be passed over because we're women,  
13       but also being women, you can't look -- you can't look for  
14       equality and then want lower standards and less exacting  
15       conditions because you're a woman. You sort of can't have it  
16       both ways.

17           As far as I'm concerned, the government's -- their  
18       prosecution of this case shows no gender bias as far as I can  
19       tell. They prosecuted regional sales reps across the board,  
20       some of whom were women and some of whom weren't. So that  
21       allegation and the arguments that you made in your sentencing  
22       report as a general matter get no traction with me, but the  
23       specific circumstances of Ms. Lee's life and what she's been  
24       able to achieve coming from a difficult background do.

25           As I say, and I think has been clear from these

1       sentencings, I don't necessarily take issue with the  
2       government's charging decisions. I think their sentencing  
3       recommendations are heavy-handed, to say the least. The crimes  
4       here were no doubt serious and a lot of people were hurt. And  
5       the government in most respects does the right thing by coming  
6       down swift and hard on a company that is hurting people the way  
7       Insys was. That's the way they deter people. But then when  
8       you look to the individual circumstances of sentencing a  
9       person, it's easier to see how the overall loss figures can  
10      overstate the harm and overstate the culpability. So I've  
11      pushed the government to sort of look a little deeper in some  
12      of those, particularly in light of the first sentencings, but  
13      they've chosen not to modify their recommendations down. I'm  
14      assuming we'll hear the same this afternoon, that you'll stick  
15      with your original recommendations with regards to all of the  
16      defendants in this case.

17           But I have given a lot of thought to Ms. Lee, not  
18      based on her gender but based on her personal circumstances and  
19      what she's been able to overcome in her life so far, and what  
20      effect prison will have on her.

21           Ms. Lee, I am going to sentence you to a period -- she  
22      can -- you can sit. I am going to sentence you to a period of  
23      incarceration. Given the charge that you've been convicted of,  
24      it's very difficult for me to do anything else. It's going to  
25      be a significantly shorter term than what the government is

1 looking for. And in some ways, you know, this will be a pause  
2 in your life and you'll have a chance to sort of reflect on  
3 what you want to do next. You're obviously bright and you're  
4 articulate and you've survived a lot of things, and you'll  
5 survive this. I can see from the letters that I've received  
6 from your family and friends that you've raised two good kids,  
7 and they'll survive this too.

8 So pursuant to the Sentencing Reform Act of 1984 and  
9 having considered the sentencing factors enumerated at 18  
10 U.S.C. 3553(a), it is the judgment of the court that the  
11 defendant Sunrise Lee is hereby committed to the custody of the  
12 Bureau of Prisons to be imprisoned for a term of one year and  
13 one day.

14 Upon release from imprisonment, the defendant shall be  
15 placed on a term of supervised release for a term of three  
16 years. That's not to monitor her behavior, which I'm sure will  
17 be fine, but to assist in the recouping of any financial  
18 penalties.

19 Within 72 hours of release from the custody of the  
20 Bureau of Prisons, you shall report in person to the district  
21 to which she's been released.

22 We'll do a restitution order later, but there will be  
23 a restitution order included in the J&C. I'm not going to  
24 impose a fine, as the defendant does not have the financial  
25 ability to pay a fine in addition to the restitution and

1 forfeiture obligations. We've discussed forfeiture. She will  
2 be required to forfeit the proceeds of the offense minus the  
3 tax money that she's paid. That amount to be arrived at later  
4 either in the presence of the defendant or not, depending on  
5 how we agree.

6           Conditions of supervised release: She cannot commit  
7 another federal, state or local crime. She cannot unlawfully  
8 possess a controlled substance. She cannot unlawfully use a  
9 controlled substance. I'm going to waive drug testing. She'll  
10 have to cooperate in the collection of DNA, and comply with any  
11 other conditions that have been adopted by the court.

12           Special conditions: She'll have to pay the balance of  
13 any restitution order according to a court ordered repayment  
14 program. She can't incur any new credit card charges or open  
15 additional lines of credit without the approval of the  
16 probation office while those financial obligations remain  
17 outstanding, and she'll have to provide the probation office  
18 with access to any requested financial information which they  
19 can share with the financial litigation section. \$100 special  
20 assessment.

21           Your rights of appeal are fully intact. I'm going to  
22 allow her to self-surrender at the institution designated by  
23 the Bureau of Prisons. We'll give a self-report date six weeks  
24 from now.

25           Mr. Hortsmann, if no institution has been designated

1 and you want to ask for an extension of that time, let me know  
2 and we'll extend it.

3 MR. HORTSMANN: I do, Your Honor. I'd also ask for  
4 the court to recommend to the Bureau of Prisons that she serve  
5 her time at the nearest female facility to Grand Rapids,  
6 Michigan.

7 THE COURT: Yes. I'll make the recommendation that  
8 she serve as close to her family in a female facility -- as  
9 close to Grand Rapids, Michigan as possible.

10 MR. YEAGER: May I ask that the stock be forfeited as  
11 well?

12 THE COURT: Any remaining stock shares will also be  
13 forfeited.

14 MR. HORTSMANN: There is no stock.

15 THE COURT: To the extent she has any, they will also  
16 be forfeited.

17 Anything else from probation?

18 PROBATION: No, Your Honor, just we need a date for  
19 self-report.

20 THE CLERK: March 4.

21 THE COURT: March 4.

22 From the government.

23 MR. WYSHAK: Your Honor, just so you can prepare for  
24 the next two sentencing, which are Mr. Babich and  
25 Mr. Burlakoff, and to respond to your comments about modifying

1 our sentencing recommendations, obviously because we're  
2 proceeding under the guideline 5K, made a motion for a downward  
3 based upon the cooperation, we will be modifying our sentencing  
4 recommendations in those two cases to seek proportionality with  
5 some of the sentences that you've imposed already. So we will  
6 not be sticking with our original recommendations.

7 THE COURT: You're going to seek proportionality for  
8 your two cooperators, but you weren't willing to seek  
9 proportionality for Ms. Lee or Mr. Rowan? I think that you've  
10 insisted in the last two sentencing that the recommendations  
11 were appropriate and my misguided numbers weren't going to have  
12 any impact on the government's view of what was right.

13 MR. WYSHAK: Quite frankly, Your Honor, we disagree  
14 with these significant variances that the court has imposed,  
15 but it would be unfair to defendants who have come forward,  
16 admitted their responsibility for the crimes, which I've heard  
17 very little of from the defendants that you've sentenced, who  
18 seem to have not accepted responsibility. These individuals  
19 have come before this court, accepted responsibility, pled  
20 guilty, testified at this trial. I believe that they will  
21 assist other districts, and it would be unfair for the court --  
22 for the government to recommend higher sentences for those  
23 individuals when you have imposed the types of sentences that  
24 you've imposed in the other defendants. So all we are trying  
25 to do is seek some proportionality. The remaining defendant,

1       Mr. Kapoor, we believe is the most culpable party. We believe  
2       that our sentencing recommendation is appropriate.

3            MR. HORTSMANN: Your Honor, may we be excused?

4            MR. WYSHAK: Well, we don't need to debate this.

5            THE COURT: Mr. Wyshak, I hear you. I disagree with  
6       you. Welcome back.

7            Anything else, Mr. Hortsmann?

8            MR. HORTSMANN: No, Your Honor. Thank you.

9            THE COURT: All right. Ms. Lee, take care of  
10      yourself. I have every confidence that you will get through  
11      this. And I really do wish you the best.

12           The case is recessed.

13           (Proceedings adjourned at 11:06 a.m.)

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1                   C E R T I F I C A T E  
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4         UNITED STATES DISTRICT COURT )  
5         DISTRICT OF MASSACHUSETTS      )  
6  
7  
8                 I certify that the foregoing is a correct transcript  
9         from the record of proceedings taken January 22, 2020 in the  
10        above-entitled matter to the best of my skill and ability.  
11  
12  
13  
14  
15         /s/ Kathleen Mullen Silva                           1/27/2020  
16  
17         Kathleen Mullen Silva, RPR, CRR                          Date  
18         Official Court Reporter  
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